

Updated as on 23.06.2016

[For departmental use]

[Exercise-04]

# *e-Exercise*



Drafting of  
Show Cause Notice  
(**Central Excise**)

---

**Note:**

In this **e-Exercise Book**, the reader can check his understanding and knowledge about *Drafting of Show Cause Notice in Central Excise*. Though all efforts have been made to make this exercise book error free, but it is possible that some errors might have crept into it. If you notice any errors or if you have any suggestion to improve this exercise book, the same may be brought to our notice through email on the e-mail address [rtinacenkanpur@yahoo.co.in](mailto:rtinacenkanpur@yahoo.co.in). This may not be a perfect **e-Exercise Book** and all are requested to assist us to make it better.

Sd/-  
(C. P. Goyal)  
Additional Director General  
NACEN, RTI, Kanpur  
[goyalcp@hotmail.com](mailto:goyalcp@hotmail.com)

### **Class Exercise No.4 – Central Excise**

Before doing this class exercise, the trainee may carefully go through the contents of the note given below.

#### **Note for the trainees:**

- This exercise on drafting of Show Cause Notice has been developed for purpose of teaching newly recruited officers of the rank of Inspectors and explains the basics of drafting of Show Cause Notice.
- This exercise can be used by trainers for the purpose of conducting class exercise of trainee officers while imparting training to such officers.
- It must be kept in mind that Show Cause Notices issued in the field are much more detailed one.
- In this exercise, attempts have been made to explain four '**C's- Contraventions, Consequences, Charged persons and Charging paragraph**'. The proper understanding of four "C"s is must for the officers to draft good quality SCN.
- After reading the situation given, the trainee officer may identify the legal provisions which have been contravened; consequences of such contravention of each of the legal provisions; person to be charged in the SCN; and finally, draft Charging Paragraph of the SCN.
- After completion of the exercise, trainee may compare his/her answer with the model answer given at the end.
- Before doing this exercise, the trainee may go through the e-book on drafting of Show Cause notice: some basics and e-book on principles of natural justice

**Situation**

M/s ABC Ltd. (hereinafter referred to as the assessee') having Registration No. ABCDF1234EXM001 are engaged in the manufacturing of Petroleum products viz. High Speed Diesel (HSD), Motor Spirit (MS), Special Kerosene Oil (SKO) etc. falling under Chapter 27.

2. The assessee is clearing their different products viz. HSD, MS. SKO etc. through pipe line to different depots. During the transportation of HSD, MS and SKO through the pipe line to their different depots, SKO comes into contact with HSD and MS and loses its identity. The assessee clears HSD and MS on payment of duty. However, they clear SKO without payment of duty, being a product meant for Public Distribution System (PDS) and as such exempted as per Notification No.12/12-CE, dated 17.03.12, Sr. No.72.

3. Further, the MS/HSD/SKO is pumped into pipeline by forming a batch of Shipments sequentially, by product-to-product pumping method, where one product in the pipeline pushes the other product. While forming the batch SKO (essentially sold from the Depot for PDS purpose) is positioned between MS and HSD, in line with standard pipeline operating procedures to avoid any mixing of MS/HSD with SKO, since SKO is used predominantly as a lighting / domestic fuel. In the product to product pumping, since one product pushes the other product, small quantity of mixing of SKO with MS/HSD takes place which is inevitable and such interfaced quantity of SKO, for the visual inspection, is taken in the receiving tanks of MS/HSD as per the standard operation/safety/quality considerations.

4. The said interfaced/intermingled products are completely different from the one they had cleared from the factory. The said intermingled products are added to the respective final products i.e. HSD & MS and sold to the ultimate buyers as MS or HSD. Therefore, the SKO contained in interface/ intermingled product is not used for intended purpose i.e. not used for sale through PDS but sold as MS or HSD and hence, not eligible for exemption under Notification No. 12/12 -CE, dt.17.03.12, Sr. no.72.

5. Whereas as per Para 2 of the Board Circular No. 636/1271/2002 -CX, dated 22.04.2002 in the event of inter-mixing of the products, the higher of the two duties i.e. duty payable on SKO not used for intended purpose and duty payable on surge/gain in MS or HSD shall be payable for the intermixed/interface quantity. In other words, the duty of inter mixed part of SKO and MS/HSD as the case may be quantified and higher of the two values may be accepted.

6. The said para is reproduced as follows:-

**"The existing instruction vide Board's letter F. No. 21/13/66-CX. 111 dated 20.03.67 and F. No. 11/419/70/09, dated 27.3.1973 accept the off-setting of gain observed in one product against loss observation in another product. Though in the scheme of Accountal of one product for the other, the duty payable on the interface SKO(co-mingled products) taken as MS or HSD is presently more than the duty liability on the shortage of imported SKO, however, the situation can he reverse also. Furthermore, it is a fact that the SKO imported under concessional duty is not fully utilized for the intended purpose and in such case, the concessional duty cannot be extended. The Board is therefore, of the view that in the event of inter mixing of the products, the higher of the two duties i.e. duty payable on SKO not used for intended purpose and duty payable on surge/gain in MS or HSD shall be payable for the intermixed/interface quantity. In other words, the duty of inter mixed part of SKO and MS/HSD as the case may be quantified and higher of the two values may he accepted"**

**Draft SCN in this case on the basis of facts given above.**

**4-C analysis of situation**

**A. Contraventions:**

- *Wrong availment of benefit of duty exemption under notification No. 12/2012-CE, dated 17.3.2012, ( Sr. No. 72)*
- *Short payment of Central Excise Duty*
- *Wrong filing of return*

**B. Consequences:**

- Demand of duty not paid/short paid under Section 11A of the Central Excise Act, 1944
- Demand of Interest on the duty not paid / short paid under Section 11AA of the Central Excise Act, 1944
- Penal action: Under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002

**C. Persons to be charged for the above said contraventions and required to face consequences as per the legal provisions?**

- M/s ABC Private Limited

**D. Charging paragraph**

Now, therefore the said M/s ABC Pvt. Ltd are hereby required to Show Cause to the Additional Commissioner of Central Excise, Kanpur having his office located at \_\_, Kanpur within a period of 30 days of receipt of this notice as to why,-

- (i) Benefit of notification No. 12/2012-CE, dated 17.3.2012 ( Sr. No. 72) should not be denied to them;
- (ii) Central Excise duty amounting to Rs.....( as explained in Paragraph \_\_ above) should not be demanded from them, in terms of section 11 A of the Central Excise Act 1944;
- (iii) appropriate interest on the duty so not paid should not be demanded and recovered in terms of Section 11AA of the Central Excise Act, 1944;
- (iv) Penalty should not be imposed upon them in terms of Section 11AC of the Act, read with Rule 25 of the Central Excise Rules 2002, for contravention of the various provisions of Central Excise Rules as aforesaid.

Model Draft Show Cause Notice

M/s ABC Ltd. (hereinafter referred to as the assessee') having Registration No. ABCDF1234EXM001 are engaged in the manufacturing of Petroleum products viz. High Speed Diesel (HSD), Motor Spirit (MS), Special Kerosene Oil (SKO) etc. falling under Chapter 27.

2. The assessee is clearing their different products viz. HSD, MS, SKO etc. through pipe line to different depots. During the transportation of HSD, MS and SKO through the pipe line to their different depots, SKO comes into contact with HSD and MS and loses its identity. The assessee clears HSD and MS on payment of duty. However, they clear SKO without payment of duty, being a product meant for Public Distribution System (PDS) and as such exempted as per Notification No.12/12-CE, dated 17.03.12, Sr. No.72.

3. Whereas, the MS/HSD/SKO is pumped into pipeline by forming a batch of Shipments sequentially, by product-to-product pumping method, where one product in the pipeline pushes the other product. While forming the batch SKO (essentially sold from the Depot for PDS purpose) is positioned between MS and HSD, in line with standard pipeline operating procedures to avoid any mixing of MS/HSD with SKO, since SKO is used predominantly as a lighting / domestic fuel. In the product to product pumping, since one product pushes the other product, small quantity of mixing of SKO with MS/HSD takes place which is inevitable and such interfaced quantity of SKO, for the visual inspection, is taken in the receiving tanks of MS/HSD as per the standard operation/safety/quality considerations.

4. Whereas, the said interfaced/intermingled products are completely different from the one they had cleared from the factory. The said intermingled products are added to the respective final products i.e. HSD & MS and sold to the ultimate buyers as MS or HSD. Therefore, the SKO contained in interface/intermingled product is not used for intended purpose i.e. not used for sale through PDS but sold as MS or HSD and hence, not eligible for exemption under Notification No. 12/12 -CE, dt.17.03.12, Sr. no.72.

5. Whereas, as per Para 2 of the Board Circular No. 636/1271/2002 -CX, dated 22.04.2002 in the event of inter-mixing of the products, the higher of the two duties i.e. duty payable on SKO not used for intended purpose and duty payable on surge/gain in MS or HSD shall be payable for the intermixed/interface quantity. In other words, the duty of inter mixed part of SKO and MS/HSD as the case may be quantified and higher of the two values may be accepted.

6. The relevant paragraphs of the CBEC Circular dated 22.04.2002 read as under:-

*"The existing instruction vide Board's letter F. No. 21/13/66-CX. 111 dated 20.03.67 and F. No. 11/419/70/09, dated 27.3.1973 accept the off-setting of gain observed in one product against loss observation in another product. Though in the scheme of Accountal of one product for the other, the duty payable on the interface SKO(co-mingled products) taken as MS or HSD is presently more than the duty liability on the shortage of imported SKO, however, the situation can he reverse also. Furthermore, it is a fact that the SKO imported under concessional duty is not fully utilized for the intended purpose and in such case, the concessional duty cannot be extended. The Board is therefore, of the view that in the event of inter mixing of the products, the higher of the two duties i.e. duty payable on SKO not used for intended purpose and duty payable on surge/gain in MS or HSD shall be payable for the intermixed/interface quantity. In other words, the duly of inter mixed part of SKO and MS/HSD as the case may be quantified and higher of the two values may he accepted"*

7. From the background given above, it appears that the assessee is not eligible for the benefit of concessional rate of duty available at Sr. No. 72 to SKO under notification No. 12/2012-CE, dated 17.3.2012 on that quantity of SKO, which get mixed with HSD/MS during transportation of HSD/MS and ultimately get sold as MSD/HS. Further, as per the condition mentioned in the notification that duty exemption is available when SKO is sold through PDS, which is not the case here.

8. On being asked to provide the quantity of SKO, which got mixed with HSD/MS, the party provided the figure for the last five years and the same are as under:-

.....

9. Whereas, it appears that by wrongly availing the benefit of concessional rate of duty on the above said quantity of SKO, the assessee short paid the Central Excise duty as detailed under:-

---

10. As the assessee has short paid the Central Excise duty amounting to Rs.\_\_\_\_ by wrongly availing the benefit of notification No. 12/2012-CE, dated 17.3.2012, the same appears to be recoverable from the assesses under section 11A of the

## Drafting of Show Cause Notice (Excise)

---

Central Excise Act, 1944 along with interest under section 11AA of the Central Excise Act, 1944.

**11.** Whereas the Assessee has suppressed the fact that they are using SKO for pumping of MS/HSD and part quantity of SKO get intermixed with MS/HSD and ultimately sold as MS/HSD, not as SKO to PDS. Therefore, extended period of five years for demand of duty so paid in short appears to be invocable in the instant case. But for specific intelligence, this fact would have remained unnoticed. They were fully aware that the quantity of SKO as mentioned in paragraph has not been sold as SKO at PDS. In spite of this, they choose to avail benefit of said notification. Further, the above said acts of omissions and commissions, they have made themselves laible for imposition of penalty under Section 11AC of the Customs Act, 1944 read with rule 25 of the Central Excise Rules, 2002.

**12.** Now, therefore the said M/s ABC Pvt. Ltd are hereby required to Show Cause to the Commissioner of Central Excise, Kanpur having his office located at \_\_, Kanpur within a period of 30 days of receipt of this notice as to why,-

- (i) Benefit of concessional rate of duty on SKO which was used for pumping MS/HSD, under notification No. 12/2012-CE, dated 17.3.2012 ( Sr. No. 72) should not be denied to them;
- (ii) Central Excise duty amounting to Rs.....( as explained in Paragraph \_\_ above) should not be demanded from them, in terms of section 11 A of the Central Excise Act 1944;
- (iii) appropriate interest on the duty so not paid should not be demanded and recovered in terms of Section 11AA of the Central Excise Act, 1944;
- (iv) Penalty should not be imposed upon them in terms of Section 11AC of the Act, read with Rule 25 of the Central Excise Rules 2002, for contravention of the various provisions of Central Excise Rules as aforesaid.

**13.** The assessee is further directed to produce at the time of showing cause, all the evidence upon which they intend to rely in support of their defence. They should also indicate in their written reply whether they wish to be heard in person, or through their legal representative, before the case is adjudicated. If no mention of the same is made in their written reply, it shall be presumed that no personal hearing is desired by them and the case may be decided on the basis of the evidence available on record, without affording them any further opportunity in the matter.

**14.** If no cause is shown against the action proposed to be taken against them within the stipulated period as shown above, or if they fail to appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidence available on the record.

## Drafting of Show Cause Notice (Excise)

---

**15.** This show cause Notice is issued without prejudice to any other action that may be taken against them or any other person concerned with the matter under the Central Excise Act, 1944, or any other Law for the time being in force.

**16.** List of RUDs and RUDs as per list are enclosed here.

**Encls:** List of RUDs and copies of documents as per List of RUDs

[Commissioner of Central Excise]

*Note: SCN has been made answerable to Commissioner based on assumption that duty short paid is more than Rs. 50 lakhs.*

To,

1. M/s ABC,

Copy to:

- (i) Commissioner of Central Excise, Kanpur
- (ii) Adjudication Section
- (iii) Concerned Central Excise Division
- (iv) Master File

\*\*\*\*\*